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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1976

No. 76-891

JOHN T. CHAMBERS, *Petitioner*

v.

CHARLES A. CHAMBERS, GRACE CHAMBERS KILLINGSWORTH, CARL ANDREW CHAMBERS AND THE STATE OF TEXAS, *Respondents.*

Opposition to Application for Writ of Certiorari to the Supreme Court of the State of Texas, Filed by Petitioner John T. Chambers

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Now Come Grace Chambers Killingsworth and Carl Andrew Chambers and file this opposition to John T. Chambers' petition for a Writ of Certiorari. Petitioner's statement as to the history of the case is substantially true.

The opinions of the Texas Courts are correctly reported.

JURISDICTION

Under the laws of the State of Texas the trial judge has the discretion and power to grant a motion for Judgment Non-Obstante Verdicto. Especially is this

true when a jury disregards all evidence of probative force and answers questions submitted in a manner not supported by the evidence.

Under the facts in this case there is no Federal question involved and neither was there any denial of due process to petitioner. It is, therefore, the opinion of these opponents that this Honorable Court does not have jurisdiction of this case.

ARGUMENT AND AUTHORITIES

The facts in this case will not support the contentions of Petitioner. There was nothing in the record to support his claim under the three (3) or five (5) year statute of limitations (Articles 5507, 5508, and 5509, Vernon's Annotated Texas Statutes Appendix "*A*"), because there was no instrument introduced into evidence to support such claim. There was no deed or deeds duly registered for a consecutive period of five (5) years prior to November 25, 1970, the date suit was filed to partition the property. Since no deed was recorded in the Deed Records of Tarrant County, Texas, there was no evidence of probative force to support the jury finding on the five (5) year limitation statute. The same is true of the three (3) year statute of limitations. Article 5508 defines color of title and our courts hold that it also means a deed. Petitioner admitted in his oral testimony that he did not have a deed that was duly recorded.

The ten (10) year statute of limitations (Article 5510, Vernon's Annotated Texas Statutes, Appendix "*A*") was not applicable for the reason that by his own testimony he, the Petitioner, had not been in possession of the property for ten (10) years prior to the death of the life tenant and the filing of the partition suit.

Petitioner by his own testimony, when he testified that his father held the property under a life estate, and his letter to Texas Electric Service Co. that he was holding possession under his father's life estate, absolutely and completely barred himself from any claim to the farm by adverse possession. Under these circumstances there is no way under Texas blue sky that he could have been denied due process of law. All of the documentary evidence introduced by Petitioner and those in opposition, were contrary to the oral testimony of the Petitioner.

The Court of Civil Appeals, in its opinion said there was no evidence of probative force to support the jury findings. To support that position we cite *Porter v. Wilson*, 389 SW(2) 650 (Supreme Court) which states:

> "There is no evidence of Probative force in the record to support the findings of the jury that the Wilsons perfected title under the provisions of Article 5510, supra. The trial court erred in failing to grant Porter's motions for an instructed verdict and for judgment non obstante verdicto."

Another Supreme Court case supporting this point is *Poenisch v. Quarnstrom*, 361 SW(2) 367.

As long as Carl N. Chambers, Sr. was living these Respondents had no right to the possession of said

property, therefore, they had no right of action for possession of same. *Hensley v. Conway*, 29 SW(2) 416 and we quote:

> "We have reached the conclusion that this interest was not barred. The statutes of limitation as to an interest in land, which one owns as a remainderman, subject to a life estate in another, do not begin to run in favor of one in possession until the death of the life tenant."

See also the case of *Nussbaum v. Nussbaum*, 292 S.W. 189 (Com. of App.):

> "A life estate in land is separate and distinct from that of the remainder. Because this is true, possession by one holding the life estate is not adverse to one holding title to the remainder. Such possession has reference only to the title of the possessor. It has no reference to the title of one holding the remainder, who has no right of possession until possession held by the life tenant and those holding under him has terminated. For this reason, the possession of the owner of the life estate is not the possession of another who holds title to the remainder. He holds possession which has reference to his own title, and not to the title of another which is separate and distinct from his.
>
> "The relation of life tenant and remainderman is different from that of landlord and tenant. The former hold the same land under separate titles. The latter hold the same land under the same title."

CONCLUSION

The Petitioner ignores the fact that there was no evidence of probative force to support the jury findings. Judge Brewster, of the Court of Civil Appeals, for the Second Supreme Judicial District of Texas, wrote a very sound and strong opinion affirming the trial court. It sets out the state laws on this question very well. Since there is no Federal question involved in this case and no due process denied nor was Petitioner's Constitutional Rights violated in any manner whatsoever, this Petition should be denied.

Respectfully submitted,

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Grace Chambers Killingsworth
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CERTIFICATE

The undersigned hereby certifies that copies of the foregoing opposition to Petitioner's Applicaton for Writ of Certiorari to the Supreme Court of the State of Texas have this day been served upon counsel of record by depositing same in the United States Mail, postage prepaid, to the following:

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Dated and signed this 24 day of January, 1977, at Fort Worth, Texas.

Obel L. McAlister

APPENDIX "A"

All of the following quoted Articles are from Vernon's Annotated Texas Statutes:

Article 5507. Three years possession.

"Suits to recover real estate, as against a person in peaceable and adverse possession thereof under title or color of title, shall be instituted within three years next after the cause of action accrued, and not afterward. Acts 1841, Page 119; P.D. 4622; G.L., Volume 2, Page 621."

Article 5508. Color of Title.

"Color of title is meant a consecutive chain of such transfers down to such person in possession, without being regular, or duly registered, as if one or more of the memorials or muniments be not registered, or be only in writing, or such like defect as may not extend to or include the want of intrinsic fairness and honesty; or the party hold under a head right."

Article 5509. Five years possession.

"Every suit to recover real estate as against a person having peaceable and adverse possession thereof, cultivating, using or enjoying the same, and paying taxes thereon, if any, and claiming under a deed or deeds duly registered, shall be instituted within five years next after cause of action shall have accrued, and not afterward. This Article shall not apply to one in possession of land, who deraigns title through a forged deed. And no one claiming under a forged deed, or deed executed under a forged power of attorney, shall

be allowed the benefits of this Article, Id., Acts 1879, Page 132; G.L., Volume 8, Page 1132."

Article 5510. Ten years possession.

"Any person who has the right of action for the recovery of lands, tenements or hereditaments against another having peaceable and adverse possession thereof, cultivating, using or enjoying the same, shall institute his suit therefor within ten years next after his cause of action shall have accrued, and not afterward. The peaceable and adverse possession contemplated by this Article, as against the person having right of action, shall be construed to embrace not more than 160 acres, including the improvements or the number of acres actually enclosed, should the same exceed 160 acres; but when such possession is taken and held under some written memorandum of title, other than a deed, which fixes the boundaries of the possessor's claim and is duly registered, such peaceable possession shall be construed to be co-extensive with the boundaries specified in such instrument. ID., P.D. 4621-24."